UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

PAMELA STONEBREAKER, Plaintiff, v. THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA, et al., Defendants.	Civil No. 11-0797-WQH(WVG) ORDER GRANTING DEFENDANT UNION SECURITY'S APPLICATIONS TO COMPEL: THE DEPOSITION OF PAMELA STONEBREAKER PRODUCTION OF DOCUMENTS

On January 18, 2012, Defendant Union Security Insurance Company ("Defendants") submitted an application via letter to compel the continued deposition of Plaintiff Pamela Stonebreaker ("Plaintiff") and to compel the production of documents.[1/] On January 27, 2012, Plaintiff submitted an opposition via letter to Defendants' application. The Court, having reviewed the application, opposition, the documents attached thereto and the authorities cited therein, HEREBY GRANTS Defendants' application.

[1/] The application is joined by the other Defendants in this case.

On September 27, 2011, the Court ordered that "Defendants... could "depose Plaintiff at a later date in addition to the deposition taken on September 13, 2011.[2/] The scope of the subsequent deposition shall not be limited."

Defendants seek to depose Plaintiff again regarding all other aspects of her claims against them. Plaintiff is willing to submit to another three hours of deposition, but not more. Defendants seek up to seven hours for the subsequent deposition.

1. Plaintiff's Deposition

Defendants argue that they should be entitled to depose Plaintiff again for up to seven hours because (1) at the September 13, 2011 deposition, Plaintiff identified several categories of her alleged damages, but Defendants did not complete their examination of Plaintiff on these topics; and (2) Plaintiff's responses to Defendants' document requests were due in December 2011 and January 2012. Consequently, the produced documents were not available to Defendants at the September 13, 2011 deposition. Defendants claim that they need to depose Plaintiff regarding the produced documents to defend against her bad faith claim. (3) Defendant Guardian Life intends to question Plaintiff regarding Plaintiff's alleged renewal of its insurance policies in late 2009, after Plaintiff's husband's death.

Defendants assert that good cause exists to depose Plaintiff for up to seven hours. They posit that not only did the Court allow the scope of the subsequent deposition to be unlimited, but that

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[2/] The Court allowed Defendants to take Plaintiff's September 13, 2011 deposition for the limited purpose of allowing them to obtain information on topics needed to defend Plaintiff's Partial Motion for Summary Judgment on her breach of contract claim.

this is a multi-Defendant case in which each Defendant needs to examine Plaintiff, necessitating extra time for the deposition. Further, Defendants seek to depose Plaintiff regarding recently produced documents that were not available to them at the September 13, 2011 deposition.

Plaintiff argues that the discovery sought by Defendants is unreasonably cumulative. She asserts that the September 13, 2011 deposition was not limited and that her damage claims were covered in that deposition. Plaintiff cites numerous instances in the September 13, 2011 deposition in which her damage claims were covered. Also, Plaintiff argues that Defendant's use of time at the September 13, 2011 deposition was not efficient in that Defendants spent time deposing Plaintiff on issues that are not relevant to this litigation.

Federal Rule of Civil Procedure 30(d)(1) states in pertinent part: "Unless... ordered by the Court, a deposition is limited to 1 day of 7 hours. The court must allow additional time consistent with Rule 26(b)(2) if needed to fairly examine the deponent..."

Federal Rule of Civil Procedure 26(b)(2) states in pertinent part: "By order, the court may alter the limits in these rules on... the length of depositions under Rule 30..."

A party seeking a court order to extend the time of a deposition must show good cause to justify such an order. Pratt v. Archstone, 2009 WL 2032469 at *1 (N.D. Cal. 2009); Tatum v. Schwartz, 2008 WL 298824 at *2 (E.D. Cal. 2008) citing The Notes of the Advisory Committee on the 2000 Amendments to Federal Rule of Civil Procedure 30 ("The party seeking a court order to extend the

examination, or otherwise alter the limitations, is expected to show good cause to justify such an order.")

Here, Defendants have shown good cause to extend the time for Plaintiff's subsequent deposition. The documents that should have been produced by Plaintiff to Defendants in December 2011 and January 2012 appear to be numerous and lengthy. Therefore, extra time for the deposition is needed so that Defendants can thoroughly examine Plaintiff with regard to those documents. Further, three Defendants in this case seek to depose Plaintiff on various topics. In at least one instance identified to the Court, one Defendant seeks to depose Plaintiff on a topic that the other Defendants do not seek deposition testimony. Moreover, the Court's September 27, 2011 Order stated that Defendants may take Plaintiff's deposition at a later date and that the scope of the subsequent deposition shall not be limited. From the Court's discussions with counsel prior to the issuance of the September 27, 2011 Order, the Court and the parties should have understood that the scope of the subsequent deposition would be unlimited and that the time allotted for that deposition would not be curtailed.

Moreover, Plaintiff wrongly argues that the subsequent deposition testimony sought by Defendants is unreasonably cumulative. The Court's review of Plaintiff's citations to instances in the September 13, 2011 deposition in which her damage claims were covered simply *identify* her damages claims. Plaintiff's testimony did not cover the *details* of her damage claims, which Defendants are entitled to probe at her subsequent deposition. Further, at the September 13, 2011 deposition, Defendants did not possess the documents they requested from Plaintiff. Therefore, it was not

possible for Defendants to have been able to depose Plaintiff on the subjects and contents of those documents.

The Court is perturbed that Plaintiff would take such an unreasonable stance and oppose a subsequent seven hour deposition when the reasons therefor are so abundantly clear.

Defendants' request is GRANTED and the subsequent deposition of Plaintiff shall be limited to seven hours.

2. Plaintiff's Fee Agreement

Defendants sought the production of Plaintiff's fee agreement with her counsel. Plaintiff's counsel produced to Defendants a redacted version of the fee agreement, claiming that the redacted portions of the agreement were protected from disclosure by the attorney-client privilege and work product doctrine. This claim is erroneous.

The Ninth Circuit, and district courts in the Ninth Circuit, have long and repeatedly held that fee agreements between an attorney and his/her client are not protected from disclosure by the attorney-client privilege or work product doctrine. Ralls v. US, 52 F.3d 223, 225 (1995); US v. Blackman, 72 F.3d 1418, 1424 (9th Cir. 1995); Stanley v. Bayer Healthcare, 2011 WL 5569761 (S.D. Cal. 2011); Hoot Winc v. RSM McGladrey, 2009 WL 3857425 (S.D. Cal. 2009); Carrizosa v. Stassinos, 2006 WL 2529503 (N.D. Cal. 2006).

Moreover, the Court's review of the unredacted version of Plaintiff's fee agreement (sent to the Court for *in camera* review) reveals that none of the redacted portions of the agreement (produced to Defendants) contain confidential information protected from disclosure by the attorney-client privilege or the work product doctrine. In fact, it appears to the Court that most of the redacted

portions of the fee agreement are nothing more than standard, customary, and boilerplate language that probably appears in many such fee agreements. There is nothing in the fee agreement that even remotely, or with the broadest possible interpretation, is attorney-client privileged or work product. Again, Plaintiff unjustifiably created a dispute where none reasonably existed. As a result, at least one week prior to Plaintiff's subsequent deposition, Plaintiff shall produce to Defendants an unredacted copy of her fee agreement with her counsel.

The Court is extremely disturbed that Plaintiff's counsel would claim portions of Plaintiff's fee agreement are protected from disclosure by the attorney-client privilege and work product doctrine, when that position is clearly contrary to long-standing Ninth Circuit law, which has been repeatedly cited by district courts in the Ninth Circuit. That Plaintiff's counsel actually produced to Defendants a redacted version of the fee agreement, in light of the clear law on the subject, and spent time seeking to limit Plaintiff's subsequent deposition to three hours is astonishing. The Court cautions Plaintiff that future disputes with Defendants that cannot be resolved without the Court's involvement will be scrutinized very closely.

DATED: February 3, 2012

Hon. William V. Gallo
U.S. Magistrate Judge